

Actual and constructive possession

INSTRUCTION NO. ____

I want to explain something about “possession.” The prosecution does not necessarily have to prove that the defendant physically possessed the _____ for you to find the defendant guilty of this crime. The law recognizes two kinds of possession: *actual* possession and *constructive* possession. Either one of these, if proved, is enough to convict.

To establish *actual* possession, the prosecution must prove that the defendant had direct, physical control over the _____, and the defendant knew he/she had control of it.

To establish *constructive* possession, the prosecution must prove:

- that the defendant had the right to exercise physical control over the _____;
- that the defendant knew he/she had that right; and
- that the defendant intended to exercise physical control over _____ at some time, either directly or through other persons.

For example, if you left something with a friend intending to come back later and pick it up, or intending to send someone else to pick it up for you, you would have constructive possession of it while it was in the actual possession of your friend.

Just being present at a location where something is found does not equal possession. The